



Maryland Department of the Environment
Fiscal Year 2023 Capital Budget Hearing
Response to Department of Legislative Services Analysis

Senate Budget and Taxation Committee
Capital Budget Subcommittee
Senator Craig Zucker, Chair
February 22, 2022

House Appropriation Committee
Capital Budget Subcommittee
Delegate Ben Barnes, Chair
February 23, 2022

This response addresses the Legislative Analyst's recommended actions and the issues noted for discussion. The department is prepared to discuss the issues and recommended actions as requested.

PAYGO Recommended Actions

1. Recommended Action: Concur with Governor's allowance of \$7,686,000 in general funds, \$106,918,000 in special funds, and \$38,429,000 in federal funds for the Water Quality Revolving Loan Fund.

Department Response: The department accepts this recommended action.

2. Recommended Action: Concur with Governor's allowance of \$777,000 in general funds for the Hazardous Substance Clean-Up Program.

Department Response: The department accepts this recommended action.

3. Recommended Action: Concur with Governor's allowance of \$4,068,000 in general funds, \$17,460,000 in special funds, and \$20,338,000 in federal funds for the Drinking Water Revolving Loan Fund.

Department Response: The department accepts this recommended action.

4. Recommended Action: Concur with Governor’s allowance of \$78,056,000 in special funds for the Bay Restoration Fund – Wastewater.

Department Response: The department accepts this recommended action.

5. Recommended Action: Concur with Governor’s allowance of \$15,000,000 in special funds for the Bay Restoration Fund – Septic Systems.

Department Response: The department accepts this recommended action.

GO Bond Recommended Actions

1. Recommended Action: Approve the \$7,292,000 general obligation bond authorization for the Comprehensive Flood Management Program to provide funds to local governments for projects that reduce the risk of loss of life and property from flooding.

Department Response: The department accepts this recommended action.

2. Recommended Action: Modify the language for the Conowingo Dam Watershed project and add the following language: Conowingo Dam. Provide funds to ~~design and construct the enhanced dredging program and~~ implement the Conowingo Watershed Implementation Plan (Regional)

Department Response: The department respectfully disagrees with the recommendation. The environmental dredging and beneficial reuse project is integral to a holistic approach to pollution prevention, climate resiliency, and implementation of the Multistate Conowingo Watershed Implementation Plan.

3. Recommended Action: Approve the \$500,000 general obligation bond authorization for the Mining Remediation Program to design, construct, and equip active and passive measures to remediate damage to water quality related to abandoned mining operations.

Department Response: The department accepts this recommended action.

4. Recommended Action: Approve the \$3,000,000 general obligation bond authorization for the Supplemental Assistance Program to provide grants to assist grant and loan recipients to meet the local share of construction costs for wastewater facility improvements.

Department Response: The department accepts this recommended action.

5. Recommended Action: Approve the \$1,427,000 general obligation bond authorization for the Water Supply Financial Assistance Program to provide funds for assistance to State and local government entities to acquire, design, construct, rehabilitate, equip, and improve water supply facilities.

Department Response: The department accepts this recommended action.

Overview

Drinking Water Revolving Loan Fund: The Department of Legislative Services (DLS) recommends that MDE comment on the implications of not using the project set-aside funding in fiscal 2023 to help fund its Water Supply Program, given the workload analysis report findings and recommendation.

Department Response: There is no implication of using the project set-aside funds in fiscal 2023 for capital costs rather than operating costs. MDE can request these set-aside funds in future grant applications if they are required for operating expenditures.

Conowingo Dam Watershed: DLS recommends the MDE comment on a series of Conowingo WIP items and also recommends that the language be struck from the fiscal 2023 capital budget that authorizes the funding to be used to construct the enhanced dredging program at Conowingo Dam.

Department Response: The legal arrangement agreed to by the Chesapeake Bay Program Partnership is called a “letter of understanding” that establishes the terms under which the Susquehanna River Basin Commission (SRBC) will serve as the financing authority for implementation of the Conowingo Watershed Implementation Plan (CWIP). The agreement recognizes the interstate nature of the CWIP and the capabilities of the SRBC as an interstate agency that works throughout the Susquehanna River Basin and establishes that the parties agree the SRBC will serve as the financing authority for initial implementation of the CWIP. In its capacity as the financing authority, the SRBC may enter into contracts, including grant agreements, to receive and distribute funds to implement the CWIP. The SRBC will use the funds it receives as the financing authority to finance best management practices that implement the CWIP with input from the Chesapeake Bay Program partnership. The work to be performed by the SRBC and the selection and approval of projects to be implemented will be guided by the CWIP in close consultation with the Chesapeake Bay Program partnership, taking into consideration the implementation of the jurisdictional WIPs during development of the annual plan.

Natural filtration practices will be targeted in the most-effective basins having the greatest impact on Chesapeake Bay water quality and as identified in the CWIP. Maryland agencies want this funding to be more specifically targeted to the natural filters, such as forest and grass buffers, that also provide climate resiliency. Also, there are agricultural practices, such as nutrient management and soil conservation plans, that help with ocean acidification as well as with reducing drinking water nitrates.

Like oysters in the Bay, mussels are some of the primary natural filters in freshwater systems that help to improve both local and Chesapeake Bay water quality. Mussel restoration is also a practice that is broadly supported across the Chesapeake Bay Program partnership and where jurisdictions are working collaboratively to quantify their pollution reduction benefits.

The \$25 million included in MDE's fy23 capital budget is approximately half of the projected annual implementation cost. The annual funding need established in the Conowingo WIP is more than \$53.3 million annually. Other jurisdictions and the USEPA have contributed approximately \$2 million dollars to develop the CWIP, the financing framework, and to begin developing the tracking, reporting and verification process. Through the CWIP Steering Committee, Maryland is working on securing ongoing financial commitments.

The innovative CWIP financing approach seeks to leverage the private sector to help finance implementation. This includes pay-for-performance and conservation financing to accelerate restoration and encourage the private sector to take on some financing risk.

The proposed funding in the capital budget is intended to jumpstart the Conowingo restoration and show Maryland's commitment to the project to incentivize additional funding contributions from other jurisdictions. The proposed funding level also considered that additional funds might be available through the Infrastructure Investment and Jobs Act. MDE and DBM will revisit funding needs for FY 2024 and beyond after the project has been implemented, the State has further developed partnerships, and more information is known about availability of other funding sources.

It is hard to quantify the anticipated nutrient and sediment load reductions from the funding budgeted as the reductions are dependent on the types and amounts of practices implemented.

Environmental dredging and beneficial reuse is an important tool and is considered a complement to watershed best management practices (BMPs). It can help reduce Conowingo loads in the near-term while BMPs are being implemented over the longer-term to reduce the nutrient pollution flowing into Conowingo Pond from the larger watershed. Given the 2025 goal for achieving Conowingo pollution loads, environmental dredging and beneficial reuse can offer fairly immediate pollution reductions. As such, MDE respectfully does not agree with the DLS recommendation to amend the budget bill language.

Issues

1. Federal IIJA Funding: DLS recommends that MDE comment on the amount of discretion Maryland is expected to have in terms of how the federal IIJA funding may be used, how the funding may change MDE's implementation of its current programs, and how MDE is preparing to use the funding effectively and equitably.

Department Response: It is anticipated that the EPA IIJA guidance will be released in the next few weeks, at which time MDE should know how much discretion will be allowed.

MDE plans to build on its existing Clean Water and Drinking Water SRF programs to administer the new IIJA funding. The IIJA or BIL, Clean Water and Drinking Water SRF funding will have the same allowable uses as the federal SRF funding that MDE currently receives and will also include additional subsidy funding, which will enable MDE to provide loan forgiveness to more disadvantaged and underserved communities.

MDE will also receive Clean Water and Drinking Water PFAs/Emerging Contaminants Funding and Drinking Water Lead Service Line Replacement Funding under IJJA. These funds will be targeted to address PFAs/emerging contaminants and replace lead service lines across the state.

MDE will notify its interested parties list about the available funding and will provide opportunities for eligible recipients to apply. MDE also plans for targeted outreach to reach communities that may not normally receive notice of funding.

2. BRF Balance: DLS recommends that MDE comment on the long-term sustainability of the BRF considering the impacts of partially explained revenue declines, recent legislation, and aggressive encumbrance schedules that are not realized.

Department Response: Cost-effective ENR upgrades to minor WWTP will continue to take priority for BRF funding, with reduced BRF funding available for the other uses of the BRF wastewater account - CSO/SSO abatement, stormwater management, and septic connections resulting from recently enacted legislation. Both the Tree Solutions Now Act and the Clean Water Commerce Act impact the overall availability of BRF funding for traditional uses of the BRF wastewater account, which is reflected in the out-year BRF funding projections.

MDE anticipates encumbering BRF funding for all local government commitments included in its capital budget. Some of the projects have not moved to construction as quickly as anticipated due to issues with more complicated permitting and supply chain impacts from COVID-19. MDE will continue to work with local governments to encumber this funding as quickly as practicable.

Also, the funding the Department is receiving through the IJJA, as well as private capital investment in environmental infrastructure enabled through the Conservation Finance Act, will provide additional needed environmental infrastructure funding to deliver co-benefits for water quality and climate action.